

**2. Amendments to the Drawings:**

Kindly replace drawing sheet 1/2, which includes Figs. 1, 2 and 3, with the attached Replacement Sheet of Drawings.

Attachment: One (1) Replacement Sheet of Drawings (Drawing Sheet 1/2).

### **3. REMARKS / DISCUSSION OF ISSUES**

Claims 1, 4-9 and 11-16 are pending in the application. No amendments are made to the claims in the present Response.

#### **Objection to the Drawings**

Applicants have considered the objection to the drawings set forth in the Office Action. Applicants present an amendment to Fig. 3 to schematically depict a passivation layer 31 disposed over the flake structure of an isolating separator layer. Applicants respectfully submit that this amendment to Fig. 3 overcomes the objection to the drawings, while adding no new matter.

Applicants further note that the drawing amendment presented is informal (i.e., holographic amendment) at this time. Upon approval of the amendment to the drawings by the Examiner, a 'formal' drawing will be presented under separate cover.

In view of the amendments to Fig. 3, Applicants respectfully submit that the objection to the drawings is overcome. Withdrawal of the objections to the drawings is respectfully requested.

#### **Rejections under 35 U.S.C. § 103**

Claims 1, 4, 6-9 and 11-16 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over by *Kimura* (U.S. Patent Application Publication 2001010152) and *Kaufmann, et al.* (U.S. Patent 4,492,432).

Claim 5 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Kimura, Kaufmann, et al.*, and *Bechtel, et al.* (U.S. Patent Application Publication 20030011306).

For at least the reasons set forth below, Applicants respectfully submit that all claims are patentable over the applied art.

A *prima facie* case of obviousness has three requirements. First, the prior art relied upon, coupled with the knowledge generally available in the art at the time of the

invention, requires some reason that the skilled artisan would modify a reference or to combine references.<sup>1</sup> The Supreme Court has, however, cautioned against the use of “rigid and mandatory formulas” particularly with regards to finding reasons prompting a person of ordinary skill in the art to combine elements in the way the claimed new invention does.<sup>2</sup> But rather the Supreme Court suggests a broad, flexible “functional approach” to the obviousness analysis recognizing that “[i]n many fields it may be that there is little discussion of obvious techniques or combinations.”<sup>3</sup> Second, the proposed modification of the prior art must have had a reasonable expectation of success, determined from the vantage point of the skilled artisan at the same time the invention was made. In other words, a hindsight analysis is not allowed.<sup>4</sup> Lastly, the prior art reference or combination of references must teach or suggest all the limitations of the claims.<sup>5</sup>

i. Claim 1

Claim 1 recites:

*A display comprising:*

*a ground plate;*

*at least one light emitting layer; and*

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<sup>1</sup> See Princeton Biochemicals, Inc. v. Beckman Coulter, Inc., 411 F.3d 1332 (Fed. Cir. 2005) (“[S]imply identifying all of the elements in a claim in the prior art does not render a claim obvious.”).

<sup>2</sup> See KSR Int’l Co. v. Teleflex Inc., 127 S. Ct. 1727 (2007) (“The obviousness analysis cannot be confined by a formalistic conception of the words teaching, suggestion, and motivation, or by overemphasis on the importance of published articles and the explicit content of issued patents.”).

<sup>3</sup> Id. See also Id. at 1743 F. 3d 1356 (Fed. Cir. 2006) (“Our suggestion test is in actuality quite flexible and not only permits, but *requires*, consideration of common knowledge and common sense”) (emphasis in original).

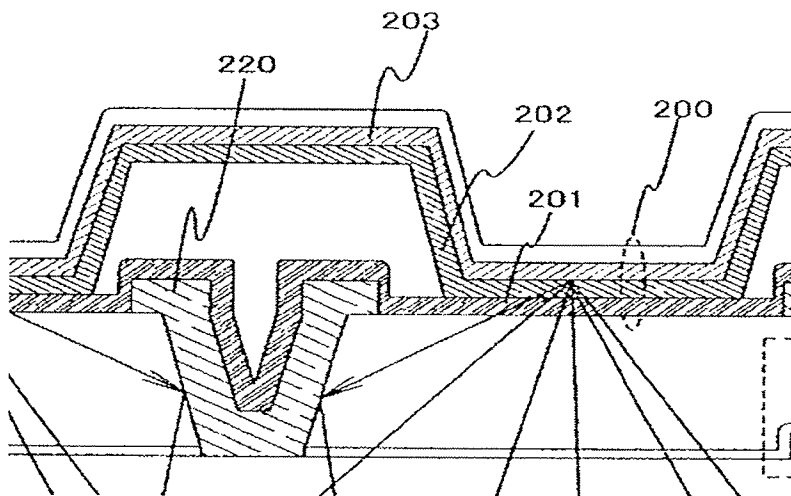
<sup>4</sup> See Amgen, Inc. v. Chugai Pharm. Co., 927 F.2d 1200 (Fed. Cir. 1991) (“Hindsight is not a justifiable basis on which to find that ultimate achievement of a long sought and difficult scientific goal was obvious.”).

<sup>5</sup> See In re Wilson, 424 F.2d 1382 (C.C.P.A. 1970) (“All words in a claim must be considered in judging the patentability of that claim against the prior art.”).

*at least one isolating separator layer comprising a metal material having a flake structure, each isolating separator layer being reflective and being positioned in contacting manner on said ground plate, wherein the at least one light emitting layer, and the at least one isolating separator layer are positioned immediately adjacent to each other in a contacting manner.*

In rejecting claim 1, the Office Action directs Applicants to the organic compound layer 202 of *Kimura* for the alleged disclosure of at least one light emitting, and to the light reflector 220 of *Kimura* for the alleged disclosure of the at least one isolating separator layer as set forth in claim 1. The Office Action also refers to the light emitting element 200 of *Kimura* as contacting the light reflector. Applicants respectfully demur.

A review of Fig. 2 of *Kimura* reveals that the organic compound layer 202, which is the light emitting layer of the light emitting element 200, is not positioned immediately adjacent to and does not contact the light reflector 220. Notably, Fig. 2 of *Kimura* shows that the anode 201 makes contact to the light reflector 220, and not the organic compound layer 202:



Thus, rather than the featured contacting of the light emitting layer and the isolating separator layer, *Kimura* discloses the contacting of the anode 201, which is not a

light emitting layer, with the light reflector 220 and remotely from the light emitting element. Furthermore, one element, the anode 203, of the light emitting element 200 contacts the light reflector 220. So, in contrast to the assertion of the Office Action, the light emitting element 200 does not contact the light reflector 220, but rather one component of the light emitting element, the anode 203, contacts the light reflector 220. Plainly, the anode 203 is not a light emitting layer. (By contrast, in an embodiment described in the filed application, the light emitting layer 20 and the isolating separator layer 10 are positioned immediately adjacent to each other in a contacting manner, as shown, for example, in Fig. 4 of the filed application.)

Accordingly, and for at least the reasons set forth above, Applicants respectfully submit that the applied art fails to disclose at least one feature of claim 1. Because the applied art fails to disclose at least one feature of claim 1, Applicants respectfully submit that a *prima facie* case of obviousness cannot be established, and claim 1 is, therefore, patentable thereover.

In addition, Applicants respectfully submit that the combination of *Kimura* and *Kaufmann, et al.* is improper, rendering the rejection based thereon improper.

“A factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning.”<sup>6</sup> Moreover, if there is no suggestion to combine the teachings of the applied art, other than the use of Applicants’ invention as a template for its own reconstruction, a rejection for obviousness is improper.<sup>7</sup>

The reference to *Kaufmann, et al.* discloses an internal reflector 11 used in a nematic liquid crystal display. The internal reflector 11 includes ‘built-in’ aluminum flakes, and is used in combination with polarizers and wave plates to alter the state of polarization of light traversing the nematic liquid crystal display. Notably, there is no disclosure or description of a light emitting layer or an isolating separator layer.

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<sup>6</sup> *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727; 82 U.S.P.Q.2D 1385 (2007). See also *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966) (warning against a “temptation to read into the prior art the teachings of the invention in issue” and instructing courts to “guard against slipping into the use of hindsight.”)

<sup>7</sup> *Ex parte Crawford, et al.* Appeal 20062429, May 30, 2007.

Applicants respectfully submit that but for their claims as templates for their own reconstruction, there would be no cause to transplant a reflector from a nematic liquid crystal device for an isolating separator layer in an active optical device.

Moreover, while the Office Action does proffer the benefit of ‘excellent reflection’ accorded by the metal flake structure, there is no substantive basis presented as to why the references would be combined. Stated somewhat differently, rather than an articulated reasoning with a rational underpinning to support the legal conclusion of obviousness, the Office Action presents an unsubstantiated alleged benefit of excellent reflectance and concludes obviousness from this benefit. This is wholly improper. As such, Applicants respectfully submit that the proffered transplanting of the teachings of *Kaufmann, et al.* into *Kimura* is not proper and should be withdrawn.

For at least the reasons set forth above, Applicants respectfully submit that the rejection of claim 1 in view of by *Kimura* and *Kaufmann, et al.* is improper and should be withdrawn. Therefore, Applicants respectfully submit that claim 1 is patentable over the applied art.

ii. General Comments on Rejections of Dependent Claims

Since each of the dependent claims depends from a base claim that is believed to be in condition for allowance, Applicant believes that it is unnecessary at this time to argue the allowability of each of the dependent claims individually. Applicant does not, however, necessarily concur with the interpretation of any dependent claim as set forth in the Office Action, nor do Applicant concurs that the basis for the rejection of any dependent claim is proper. Therefore, Applicant reserves the right to specifically address the patentability of the dependent claims in the future, if deemed necessary.

**Conclusion**

In view the foregoing, applicant(s) respectfully request(s) that the Examiner withdraw the objection(s) and/or rejection(s) of record, allow all the pending claims, and find the application in condition for allowance.

If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

Respectfully submitted on behalf of:  
Phillips Electronics North America Corp.

/William S. Francos/

by: William S. Francos (Reg. No. 38,456)

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